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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,256

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Robert Wilfer

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11/17/2009

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/563,256	<b>Applicant(s)</b> WILFER ET AL.	
	<b>Examiner</b> Brent T. O'Hern	<b>Art Unit</b> 1794	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1,2,4-6 and 8-23.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Brent T. O'Hern/  
 Examiner  
 Art Unit: 1794

## Continuation of 3. NOTE:

Applicant's amendments filed 10/30/2009 will not be entered since they require further consideration and search and do not place the application in better form for appeal. Although amended independent claim 1 incorporates limitations from cancelled dependent claim 10 at line 6 of amended claim 1, amended claim 1 contains significant amendments beyond this that were not previously considered. Many of Applicant's arguments are directed to the amended claims.

## Continuation of 11. does NOT place the application in condition for allowance because:

The application is not in condition for allowance as the amendments require further consideration and search. In response to Applicant's arguments (See p. 5, para. 2 of Applicant's Paper filed 10/30/2009.) that the amendment does not raise new issues or require new search because dependent claim 8 has already been examined, it is noted that this argument is not persuasive. Amended independent claim 1 contains significant amendments beyond that of dependent claim 8 and cancelled claim 10.

In response to Applicant's arguments (See p. 5, para. 3 to p. 6, para. 2 of Applicant's Paper filed 10/30/2009.) that the food casing as claimed refers to a composition that does not include polyolefins and Hisazumi ('406) refers to polyolefins, it is noted that Applicant appears to be referring to amended claim 1 and not the previously presented claim 1. Amended claim 1 requires further consideration and search to determine whether the claims are allowable. The previously presented claim does not negatively exclude or exclude otherwise polyolefins as negative language is not set forth and the "comprises" language is used. Applicant's comments regarding the "water soluble" language added to amended independent claim 1 is new language and not present in cancelled dependent claim 10.

In response to Applicant's arguments (See p. 6, paras. 3-4 of Applicant's Paper filed 10/30/2009.) that dependent claim 14 is not anticipated or obvious over Hisazumi ('406) for the reasons set forth regarding amended independent claim 1, it is noted that no further precise arguments are set forth than discussed above.

In response to Applicant's arguments (See p. 6, paras. 5-7 of Applicant's Paper filed 10/30/2009.) that Delius ('364) does not teach dependent claim 5 because Delius ('364) does not teach a "water-soluble" polymer, it is noted that the previously presented dependent claim 5 and independent claim 1 do not set forth limitations directed to a "water-soluble" polymer. The "water-soluble" language is added with this amendment (Applicant's Paper filed 10/30/2009.) which requires further consideration and search.

In response to Applicant's arguments (See p. 7, paras. 1-5 of Applicant's Paper filed 10/30/2009.) that Okudaira ('263) does not teach the organic and inorganic fillers per amended claim 1, and the film being heat set, because none of Okudaira ('263) additives can be considered fillers, it is noted that Applicant's filler language is broad and Okudaira ('263) does teach fillers as made of record. Applicant does not precisely rebut any of the fillers taught by Okudaira ('263) and explain why they are not inorganic or organic fillers. Okudaira's ('263) film disclosed at col. 7, ll. 16-30 is interpreted as being heat set which Applicant does not precisely rebut.

In response to Applicant's arguments (See p. 7, paras. 6-7 of Applicant's Paper filed 10/30/2009.) that it would not have been obvious to incorporate the fillers as taught by Anderson ('970) into Hisazumi ('406) because the composition of Anderson's ('970) and Hisazumi's ('406) films are different and even if they were the same then Hisazumi's ('406) modified casing would not be smoke permeable, it is noted that although Anderson's ('970) and Hisazumi's ('406) films are not identical they both teach the same basic polyamide type of films that Applicant claims. The fillers disclosed by Anderson ('970) are widely used in the sausage casing art for a wide variety of sausage casings. Thus, there is no persuasive reason why one would not incorporate Anderson's ('970) common fillers into Hisazumi's ('406) product. Applicant does not set forth any analysis to support its' conclusion of why Hisazumi's ('406) product containing fillers can not be smoke-permeable.

In response to Applicant's arguments (See p. 8, paras. 2-5 of Applicant's Paper filed 10/30/2009.) that Hisazumi ('406) does not teach acidic liquid smoke because Hisazumi ('406) smoke is gaseous and not liquid as Applicant's smoke is generated by heating (and evaporating) wood next to water, it is noted that Applicant's arguments are not persuasive. The smoke in Hisazumi's ('406) sausage is not gaseous but rather the smoke has condensed into the structure of the sausage. During the manufacture of Applicant's sausage its' smoke also condenses into the structure of the sausage.

In response to Applicant's arguments (See p. 8, paras. 2 and 4-5 of Applicant's Paper filed 10/30/2009.) that dependent claim 19 is not unpatentable over Hisazumi ('406) for the reasons set forth regarding amended independent claim 1, it is noted that no further precise arguments are set forth than discussed above.

In response to Applicant's arguments (See p. 8, paras. 6-7 of Applicant's Paper filed 10/30/2009.) that it would not have been obvious to shirr Hisazumi's ('406) product as taught by Hammer ('886) because the composition of Hisazumi's ('406) and Hammer's ('886) casing are different, it is noted that shirring is very common in the sausage art and there is nothing in the record to indicate that Hisazumi's ('406) product is not capable of being shirred.

In response to Applicant's arguments (See p. 9, paras. 1-2 of Applicant's Paper filed 10/30/2009.) that it would not have been obvious to stuff Hisazumi's ('406) casing with an emulsion, per dependent claim 23, as taught by Krallmann ('502) because the casings have different compositions, it is noted that the primary purpose for making sausage casings is to stuff them with sausage emulsions and it does not matter whether the composition of one casing may be different from another.

Examiner, Art Unit: 1794